

JOSE LOPEZ, ET AL.

Plaintiffs,

VS.

NURIA T. PRENDES, ICE/ERO
Director, Dallas Field Office

Defendant.

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NO. 3-11-CV-3184-M

ORDER

The United States Magistrate Judge made Findings, Conclusions and a Recommendation in this case. Plaintiff filed objections on December 22, 2011, and New Evidence and Request for Emergency Decision on Plaintiff's Objections, filed January 6, 2012, and the District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The Court is bound by and must follow the per curiam decision of the Fifth Circuit in *Merlan v. Holder*, 2011 WL 6091152 (5th Cir. Dec. 6, 2011) which holds that "an alien" who has been deported pursuant to a final removal order is not "in custody" for habeas purposes. Although the case alludes to the possibility that "deportation [which] was the result of any extreme circumstances" could provide an exception to the rule, this Court does not believe that the Fifth Circuit intended circumstances such as those alleged here to constitute that exception.

Therefore, the objections are overruled, and the Court ACCEPTS the Findings, Conclusions and Recommendation of the United States Magistrate Judge. Plaintiff's motion for an emergency writ of habeas corpus [Doc. #7] is dismissed for lack of subject matter jurisdiction.

SO ORDERED this 6th day of January, 2012.



BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS